

IN THE CIRCUIT COURT OF HANCOCK COUNTY, WEST VIRGINIA

JEFFREY A. HORKULIC, REBECCA A. HORKULIC, his wife and JEFFREY HORKULIC as natural parent and legal guardian of STEPHANIE HORKULIC and BENJAMIN HORKULIC, minors,

Plaintiffs,

vs.

CIVIL ACTION NO. 02-C-244 (R)

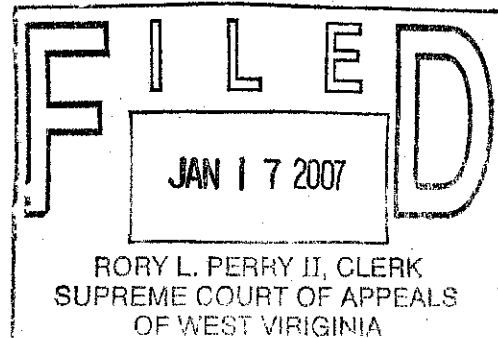
WILLIAM O. GALLOWAY, GALLOWAY LAW OFFICES, TIG INSURANCE COMPANY, CAMBRIDGE PROFESSIONAL LIABILITY SERVICES and ACCORDIA OF WEST VIRGINIA, INC., and JOHN DOES UNKNOWN,

Defendants.

**ORDER**

This matter is again before the Court pursuant to the defendant, TIG Insurance Company's request for a finding pursuant to *Rule 54(b)* of the *West Virginia Rules of Civil Procedure* relative to the Court's Order of August 25, 2006. After maturely considering such request, the Court finds that more than one (1) claim for relief is presented in this action and multiple parties are involved. However, the Court's Order of August 25, 2006, dismissed *with prejudice* the underlying malpractice action. Accordingly, such Order constitutes the entry of a final judgment as to the underlying legal malpractice claim, but not as to the remaining claims or parties. Therefore, the Court expressly determines and it is hereby **ORDERED** that there is no just reason for delay and the Court expressly directs, determines and hereby **ORDERS** that the "Findings of Fact and Conclusions of Law and Order" entered by the Court on August 25, 2006, constitutes the entry of a final judgment as contemplated by *Rule 54(b)* of the *West Virginia Rules of Civil Procedure*.

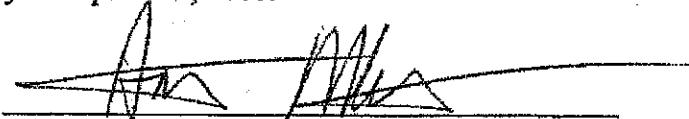
September 29 2006  
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No. 72 Page 513  
Brenda L. Jackson  
Clerk of said Court



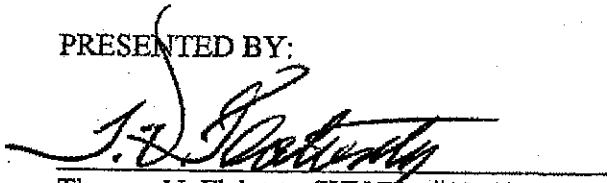
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HANCOCK COUNTY  
Brenda L. Jackson

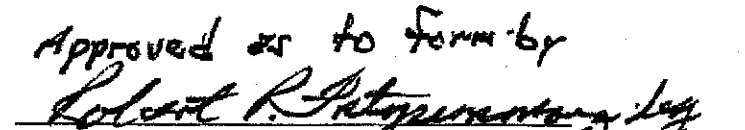
The Circuit Clerk is directed to provide an attested copy of this Order to all counsel of record.

It is so **ORDERED** this 29 day of September, 2006.

  
Arthur M. Recht, Judge

PRESENTED BY:

  
Thomas V. Flaherty (WV Bar #1213)  
Flaherty, Sensabaugh & Bonasso, PLLC  
P. O. Box 3843  
Charleston, WV 25338-3843

Approved as to Form by  
  
Robert P. Fitzsimmons (WV Bar #1212)  
Fitzsimmons Law Offices  
1609 Warwood Avenue  
Wheeling, WV 26003  
*with permission*

A TRUE COPY

Attests

  
Brenda L. Jackson  
Clerk, Circuit Court, Hancock County

Deputy

~~PLAINTIFFS PROPOSED FINAL VERSION~~

**IN THE CIRCUIT COURT OF  
HANCOCK COUNTY, WEST VIRGINIA**

FILED  
HANCOCK COUNTY  
BRENDA L. JACKSON CLERK

JEFFREY A. HORKULIC, )  
REBECCA A. HORKULIC, )  
his wife, and JEFFREY )  
HORKULIC, As Natural )  
Parent and Legal Guardian )  
of Stephanie Horkulic and )  
Benjamin Horkulic, minors, )  
Plaintiffs, )

vs. )

CIVIL ACTION NO. 02-C-244 R

WILLIAM E. GALLOWAY, )  
GALLOWAY LAW OFFICES, )  
TIG INSURANCE COMPANY, )  
CAMBRIDGE PROFESSIONAL )  
LIABILITY SERVICES and )  
ACORDIA OF WEST VIRGINIA, )  
INC., and JOHN DOES )  
UNKNOWN, )  
Defendants. )

August 25 2005  
Entered In Civil Order Book

No. 72

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Brenda L. Jackson

Clerk of said Court

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND ORDER**

On the 30<sup>th</sup> day of May, 2006, came the plaintiffs, Jeffrey A. Horkulic and Rebecca A. Horkulic, by their attorneys, Robert P. Fitzsimmons, David N. Dittmar and Dean G. Makricostas, and as well came Defendant William E. Galloway, in person and by his attorneys, Joseph W. Selepe and Jason A. Cuomo. Also

~~Present~~  
appearing, was Defendant TIG Insurance Company by its attorneys,  
Thomas V. Flaherty, Beth Ann Berger Zerman and Darla Ann  
Mushet, and as well came Defendant Cambridge Professional  
Liability Services by its attorneys, Beth Ann Berger Zerman,  
Darla Ann Mushet and Kurt F. Fernsler, *these Defendants*

*Although Present were not permitted to appear at  
Hearing.*

The Court has previously reviewed and considered  
plaintiffs' Motion to Compel Enforcement of Compromise  
Settlement Agreement, memorandum in support of motion and  
supplement to motion to compel enforcement. The Court has also  
considered all responsive pleadings filed by the parties.

The Court heard testimony and reviewed exhibits introduced  
into evidence at the hearing on May 30, 2006, which by  
agreement of the parties was held in the Circuit Court of Ohio  
County, West Virginia. All of the exhibits of Horkulic and  
Galloway were marked and upon motion of each party were  
admitted into evidence without objection by plaintiffs and  
defendant. TIG and Cambridge's objections to certain exhibits  
were noted and overruled. After reviewing all of the

testimony, exhibits, memoranda of the parties and the argument of counsel, the Court made the following findings of fact and conclusions of law:

### **Findings of Fact**

(1) Jeffrey A. Horkulic and Rebecca A. Horkulic (hereinafter referred to as "plaintiffs") were involved in an automobile collision in the State of Ohio on November 19, 1999.

(2) Plaintiffs employed Attorney William E. Galloway (hereinafter "Galloway") to represent them in their personal injury claims as a result of the automobile collision.

(3) Defendant Galloway did not resolve plaintiffs' personal injury claim or file a lawsuit within the applicable statute of limitations and has admitted negligence/malpractice in the handling of plaintiffs' personal injury claim.

(4) Plaintiffs filed this lawsuit against Defendant Galloway alleging malpractice, fraud and the tort of outrage (Counts I, II and III) and also filed claims against TIG Insurance Company (hereinafter "TIG") and Cambridge Professional Liability Services (hereinafter "Cambridge") (Count IV) for violation of the Unfair Claims Settlement Practices Act (W.Va. Code §33-11-4, et seq.).

(5) An order bifurcating the claims and staying discovery against TIG and Cambridge was previously entered by this Court on September 5, 2003.

(6) At all times material to the motions being considered, William D. Wilmoth, a member of Steptoe & Johnson, PLLC, Wheeling, West Virginia, and a member of the State Bar of West Virginia for 31 years, was the attorney for Defendant Galloway, having been selected and retained by TIG pursuant to TIG's obligation to defend Galloway as a TIG insured.

(7) At all times material herein, Jason A. Cuomo, of Cuomo Law Offices, Wellsburg, West Virginia, was the personal counsel for Defendant Galloway.

(8) At the request of Defendant Galloway's counsel, William D. Wilmoth, Horkulics' counsel, Robert P. Fitzsimmons, met with Attorney Wilmoth at Fitzsimmons Law Offices on or about May 4, 2005, in an effort to discuss settlement of the claims against Defendant Galloway.

(9) The policy limits of Defendant Galloway's malpractice policy with TIG were Five Hundred Thousand Dollars (\$500,000.00).

(10) At the May 4, 2005, conference, Wilmoth and Fitzsimmons discussed two alternatives for a settlement, which were:

**ALTERNATIVE A**

(a) Defendant Galloway would pay Horkulics the policy limits, which was believed to be Five Hundred Thousand Dollars

(\$500,000.00), minus the approximate costs of litigation and expenses of approximately Fifty Thousand Dollars (\$50,000.00);

(b) Defendant Galloway would confess judgment on the issue of negligence and confess judgment for damages in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00) for Mr. Horkulic and One Hundred Thousand Dollars (\$100,000.00) for Mrs. Horkulic;

(c) TIG would consent to the judgment order and the confessed judgments;

(d) Horkulics would agree not to execute against Defendant Galloway on the judgment and would agree not to record the judgment in the County Court's Office;

(e) A dismissal with prejudice would be filed and entered in favor of Defendant Galloway for all claims against Defendant Galloway; and

(f) If Defendant Galloway filed any type of claim against TIG or Cambridge, including, but not limited to, first-party bad faith or Unfair Claims Settlement Practice Act, the Horkulics would receive thirty-three and one-third percent (33-1/3%) of any monies (gross) collected.

#### ALTERNATIVE B

Defendants would pay Horkulics One Million Dollars (\$1,000,000.00) in cash in exchange for a release of Defendant Galloway and a dismissal order as to the claims against Defendant Galloway.

(11) Galloway's attorney discussed the alternative settlement proposals with a Senior Corporate Claims Analyst from

TIG, namely, Mark S. Rapponotti (who is an attorney), and obtained authority to settle the claim on behalf of Defendant Galloway in accordance with alternative A with the exception that TIG would not consent to the confession of judgments.

(12) On or about May 9, 2005, Attorney Wilmoth contacted Attorney Fitzsimmons and advised him that he had authority to enter into a settlement agreement generally consistent with Alternative A, and Galloway's attorney and Horkulics' attorney entered into a settlement agreement upon the following terms:

(a) TIG as insurer for Defendant Galloway would pay Horkulics Four Hundred Fifty Thousand Dollars (\$450,000.00) cash;

(b) Defendant Galloway would confess judgment admitting liability and admitting damages to Jeffrey A. Horkulic in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00) and damages to Rebecca A. Horkulic in the amount of One Hundred Thousand Dollars (\$100,000.00);

(c) Defendant Galloway would waive all attorney-client privileges he has as to any and all documents and records maintained by his insurer or attorneys;

(d) Language would be added in the release that the Horkulics were not made whole by the settlement for their damages and that Defendant Galloway's policy was fully exhausted as a result of the cash payment, together with expenses;

(e) There was no agreement of confidentiality although the Horkulics would exercise their best efforts not to publicize the settlement;

(f) If Galloway filed any type of claim against TIG and/or Cambridge, Horkulics would receive thirty-three and one-third percent (33-1/3%) of the gross amount of any monies collected;

(g) TIG would not consent to the confessed judgment of liability and damages;

(h) The Horkulics would agree not to execute on the judgment against Defendant Galloway above the policy limit payment and would also agree not to record the judgment in the County Clerk's Office;

(i) A request would be made to the Court to determine that this was a good faith settlement, and although not part of the settlement agreement, Galloway's attorney indicated he did not think it would be a problem to structure some of the proceeds into a structured annuity; and

(j) A dismissal with prejudice would be filed and entered in favor of Defendant Galloway for all claims against Defendant Galloway.

(13) In reliance on the settlement agreement, Horkulics' counsel obtained bids on structured annuities from Ringler Associates, Inc., of Pittsburgh.

(14) Attorney Fitzsimmons contacted Attorney Wilmoth on several occasions to determine the status of the settlement, including the proposed release, dismissal order and payment, and Attorney Wilmoth indicated some issue had arisen with the insurance company. (See Plaintiffs' Exhibit 3.)

(15) The only disagreement as to the terms of the settlement among the Horkulics, Galloway and TIG appears to be

the provision wherein Galloway and TIG were asked to consent to a confessed judgment of liability and damages.

(16) By e-mail dated May 24, 2005, Attorney Wilmoth advised Mark Rapponetti, the adjuster for TIG, that plaintiffs would file a motion for entry of consent judgment, to which Mr. Galloway will agree (to protect his assets). In this e-mail, it was further noted that the insurance company's counsel could come into court and file an objection. (Plaintiffs' Exhibit 2.)

(17) On or about August 10, 2005, Horkulics' counsel filed a "Motion to Compel Enforcement of Compromised Settlement Agreement," because the settlement agreement had not been consummated.

(18) On or about August 18, 2005, a telephonic conference was held among William D. Wilmoth; Thomas V. Flaherty, attorney for TIG; Beth Ann Berger Zerman, Attorney for TIG; and Mr. Ruberry, as representative for TIG. After discussing the

parameters of the settlement, the parties included Horkulics' attorney, Robert P. Fitzsimmons, in the conference call, and a settlement agreement was reached and confirmed, which included the following items:

(a) The Horkulics would be paid Five Hundred Thousand Dollars (\$500,000.00) cash from Galloway's insurance company, TIG;<sup>1</sup>

(b) Galloway would confess judgment on liability and also damages for Mr. Horkulic in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00) and Mrs. Horkulic in the amount of One Hundred Thousand Dollars (\$100,000.00);

(c) TIG could file an objection to the confessions of judgment;

(d) The Horkulics would not record the judgments in the County Clerk's Office;

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<sup>1</sup> It was determined that the policy limits were not decreased by attorney fees or costs as originally believed by the parties, and therefore the \$450,000 cash payment was increased to the policy limits of \$500,000.

(e) The Horkulics would not attempt to execute on the judgment against Galloway above the cash payment;

(f) If Galloway filed a claim against TIG and/or Cambridge, the Horkulics would receive thirty-three and one-third percent (33-1/3%) of any monies or things collected (See Plaintiff's Exhibit 5.); and

(g) A dismissal with prejudice would be filed and entered in favor of Defendant Galloway for all claims against Defendant Galloway.

(19) Following the August 18, 2005, conference call, plaintiffs' counsel made several requests that the settlement documents, together with the settlement proceeds check, be forwarded. (Plaintiffs' Exhibits 6, 7 and 8.)

(20) By letter dated September 29, 2005, Galloway's attorney, William Wilmoth, confirmed in a letter to Horkulics' counsel, Fitzsimmons, and TIG's counsel, Flaherty, that the letter of Horkulics' counsel confirming the terms of the

settlement of September 1, 2005 (Plaintiffs' Exhibit 5) accurately set forth the agreement although there were some "small parts of the settlement" which were not discussed which should be included in the settlement agreement. These small items did not in any way relate to the consent to liability and judgments and are not material to the settlement agreement and are those items normally incidental to a settlement agreement of this nature.

(21) It was at all times material herein Attorney Wilmoth's intent and belief that the settlement reached between the Horkulics and Galloway would not create personal liability exposure to his client, Galloway, from either the Horkulics or his insurer, TIG.

(22) Attorney Wilmoth believed at all times material herein based upon his discussions with representatives of TIG that the settlement agreement reached by him on behalf of his client, Galloway, and with the Horkulics' counsel would not in

any way create personal liability or exposure to Wilmoth's client, Galloway.

(23) Attorney Wilmoth wrote to plaintiffs' counsel in furtherance of the settlement agreement reached in the telephone conference on August 18, 2005. (See Plaintiffs' Exhibit 10.)

(24) Attorney Wilmoth indicated that the claims adjuster, Mark Rapponetti, had only indicated that the insurance company would not consent to the confessions of liability and judgments and never indicated that Attorney Wilmoth did not have the authority to bind the insured to the confessions of judgment on liability and damages.

(25) Attorney Wilmoth did not know that the insurance company would object to its insured's consent and confession to a judgment on liability and damages until Attorney Wilmoth received a letter from Beth Zerman dated August 25, 2005. (See Plaintiffs' Exhibit 11.)

(26) In reliance upon the settlement, Horkulics' counsel wrote to Galloway's counsel (Plaintiffs' Exhibits 12 and 15) and wrote to the structured annuity broker (Plaintiffs' Exhibit 13). In addition, Galloway's counsel wrote to the Horkulics' counsel indicating he would do a draft of the release in furtherance of the settlement agreement. (Plaintiffs' Exhibit 14.)

(27) Attorney Wilmoth wrote to Attorney Fitzsimmons by letter dated December 20, 2005, indicating that he believed "that we had a settlement." (Plaintiffs' Exhibit 16.)

(28) There are two issues relating to the motions, namely:

(a) Whether there was a settlement between the Horkulics and Galloway and whether the terms of that settlement include Galloway's consenting to a judgment on liability and damages; and

(b) Whether TIG precluded Wilmoth from including the consent judgments as part of the settlement.

(29) A settlement was reached to settle the Horkulics' claims against Galloway at the latest by August 18, 2005.

(30) The terms of the settlement between the Horkulics and Galloway by and through Galloway's attorney and TIG, are as follows:

(a) TIG would pay the Horkulics Five Hundred Thousand Dollars (\$500,000.00) cash;

(b) Defendant Galloway would confess judgment admitting liability and admitting damages to Jeffrey A. Horkulic in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00) and damages to Rebecca A. Horkulic in the amount of One Hundred Thousand (\$100,000.00);

(c) Defendant Galloway would waive all attorney-client privileges he has as to any and all documents and records maintained by his insurer and attorneys;

(d) Language would be included in the release acknowledging that the Horkulics were not made whole by the settlement for their damages and Defendant Galloway's policy of insurance was fully exhausted as a result of the cash payment;

(e) The Horkulics would exercise their best efforts not to publicize the settlement;

(f) If Defendant Galloway files any type of claim against TIG Insurance Company or Cambridge Professional Liability Services, the Horkulics would receive thirty-three and one-third percent (33-1/3%) of the gross amount of any monies or things collected;

(g) TIG would file an objection to the confessed judgments;

(h) The Horkulics would agree not to execute on the judgment against Defendant Galloway above the Five Hundred

Thousand Dollar (\$500,000.00) agreed-upon cash payment and would also agree not to record the judgment in the County Clerk's Office;

(i) The Horkulics and/or Galloway may request that the Court find that this was a good faith settlement;

(j) The Horkulics may designate any portion of the Five Hundred Thousand Dollars (\$500,000.00) settlement for purchasing a structured annuity (which agreement will be hereinafter referred to as the "August 18, 2005, Settlement"); and

(k) A dismissal with prejudice would be filed and entered in favor of Defendant Galloway for all claims against Defendant Galloway.

(31) Attorney Wilmoth and Attorney Fitzsimmons had the actual authority to enter into a settlement upon the terms set forth in the "August 18, 2005, Settlement."

(32) Attorney Wilmoth had the authority from TIG to enter into the settlement upon the terms described in the "August 18, 2005, Settlement."

### **Conclusions of Law**

Based upon the aforesaid Findings of Fact, the Court makes the following Conclusions of Law:

(1) A compromise is an agreement between two or more persons who, to avoid a lawsuit, amicably settle their differences.

(2) A compromise is a contract and therefore requires the elements of a contract, namely, offer, acceptance, mutuality and consideration.

(3) Compromise agreements are favored by law and are to be construed as any other contract. Floyd v. Watson, 163 W.Va. 65, 254 S.E.2d 687 (1979).

(4) Specific performance is available to enforce a compromise agreement assuming the other requisites for the remedy are established. Floyd, Id., at 690.

(5) Specific performance is an equitable remedy which compels the performance of a contract on the precise terms agreed upon or such a substantial performance as will do justice between the parties under the circumstances. It is a means of compelling a contracting party to do precisely what he should have done without being coerced by a court. The object in such cases is to place the party without fault in as nearly the same position as he would have been had there been no default by the other party. Floyd, Id., at 690.

(6) Compromise by parties of their differences is favored by all courts. When a matter has thus been put at rest, it should not be disturbed except for grave cause. Sanders v. Roselawn Memorial Gardens, Inc., 152 W. Va. 91, 159 S.E.2d 784 (1968).

(7) A settlement agreement or stipulation voluntarily entered into by parties cannot be repudiated by either party and will be summarily enforced by the court. All States Investors, Inc., v. Bankers Bond Co., 343 F.2d 618 (6<sup>th</sup> Cir. 1965).

*Impeccable*  
(8) A compromise or settlement of litigation is always referable to the action or proceeding in the court where the compromise was effective; it is through that court the carrying out of the agreement should thereafter be controlled. Otherwise, the compromise, instead of being an aid to litigation, would be only productive of litigation as a separate and individual impetus. All States, Id., at 624.

(9) A settlement agreement was reached between the Horkulics and Galloway's legal representative and TIG at the latest by August 18, 2005, the terms of which are as follows:

(a) Galloway's insurance carrier, TIG, would pay Horkulics Five Hundred Thousand Dollars (\$500,000.00) cash;

(b) Defendant Galloway would confess judgment admitting liability and admitting damages to Jeffrey A. Horkulic in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00) and damages to Rebecca A. Horkulic in the amount of One Hundred Thousand (\$100,000.00);

(c) Defendant Galloway would waive all attorney-client privileges he has as to any and all documents and records maintained by his insurer or attorneys;

(d) Language would be included in the release acknowledging that the Horkulics were not made whole by the settlement for their damages and Defendant Galloway's malpractice insurance policy was fully exhausted as a result of the cash payment;

(e) The Horkulics would exercise their best efforts not to publicize the settlement;

(f) If Defendant Galloway files any type of claim against TIG Insurance Company or Cambridge Professional Liability Services, the Horkulics would receive thirty-three and one-third percent (33-1/3%) of the gross amount of any monies or things collected;

(g) TIG would file an objection to the confessed judgments;

(h) The Horkulics would agree not to execute on the judgment against Defendant Galloway above the Five Hundred Thousand Dollar (\$500,000.00) cash payment and would also agree not to record the judgment in the County Clerk's Office;

(i) The parties may petition the Court to determine that the settlement was a "good faith settlement";

(j) The Horkulics may direct the insurance carrier to purchase a structured annuity for any portion of the Five Hundred Thousand Dollars (\$500,000.00) cash proceeds (the "August 18, 2005, Settlement"); and

(k) A dismissal with prejudice would be filed and entered in favor of Defendant Galloway for all claims against Defendant Galloway.

(10) At all times material herein, Attorney Wilmoth had the actual authority to bind Defendant Galloway in a settlement specifically including the "August 18, 2005, Settlement."

(11) At all times material herein, Attorney Wilmoth had the actual authority to bind TIG to the terms of the settlement, specifically including the "August 18, 2005, Settlement."

(12) Defendants Galloway and TIG have not fulfilled the terms of the "August 18, 2005, Settlement," and therefore plaintiffs' motion to compel enforcement or compromise of settlement agreement should be granted.

(13) It was Attorney Wilmoth's intent, which he expressed to TIG, that this settlement would eliminate any personal

exposure or liability of the assets of his client, Defendant Galloway, and TIG knew or should have known that the elimination of any personal exposure or liability to Defendant Galloway was a part of the settlement of August 18, 2005.

(14) As a result of the settlement, Galloway's personal assets are not at risk and are completely protected from plaintiffs and TIG.

(15) TIG has no rights to seek any claim against Defendant Galloway as a result of Defendant Galloway's agreement to consent to a confessed judgment on liability and damages.

(16) Horkulics' counsel may be entitled to attorney fees and reimbursement of expenses incurred in the prosecution of their motion to compel enforcement of compromise settlement agreement. See Sansone v. Brandywine Homes, Inc., 215 W. Va. 307, 599 S.E.2d 730 (2004).

## **ORDER**

The Court notes that counsel for the plaintiffs, Horkulics, and Defendant Galloway moved for the admission of various exhibits, including plaintiffs' Exhibits 1 through 16 and Defendants' Exhibit 1, and no objection was made to either party's motion to introduce said exhibits; and it is, therefore, accordingly

**ORDERED** that all exhibits marked for introduction into evidence are admitted without objection by plaintiffs or Defendant Galloway. The objections of Attorney Thomas V. Flaherty, as counsel for TIG, are noted and overruled. The objections of Attorney Kurt F. Fernsler, as counsel for Cambridge Professional Liability Services, are noted and overruled.

Based on the aforesaid Findings of Fact and Conclusions of Law, it is accordingly:

**ORDERED** that plaintiffs' "Motion to Compel Enforcement of Compromise Settlement Agreement" be and is hereby granted. It is further

**ORDERED** that a judgment in the amount of Five Hundred Thousand Dollars (\$500,000.00) be awarded in favor of Jeffrey A. Horkulic and Rebecca A. Horkulic against William E. Galloway, Galloway Law Offices and TIG Insurance Company as of August 18, 2005, with interest at the rate of ten percent (10%) per annum from August 18, 2005, until paid in full and TIG shall pay said judgment with applicable interest. It is further

**ORDERED** that Defendant Galloway hereby confesses judgment admitting liability and further admitting that the damages of Jeffrey A. Horkulic are in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00) as a result of Defendant Galloway's negligence/malpractice and that the

damages to Rebecca A. Horkulic are in the amount of One Hundred Thousand Dollars (\$100,000.00) as a result of Defendant Galloway's negligence/malpractice. It is further

**ORDERED** that defendants shall be entitled to object to the admissibility into evidence of the confessed judgment portion of the settlement during the Unfair Claims Settlement Practices Act claim (W.Va. Code §33-11-4, et seq.) which and been previously stayed and bifurcated. It is further

**ORDERED** that Defendant Galloway waives all attorney-client privileges he has to any and all documents, records and things maintained by TIG and/or Cambridge and his or their attorneys. It is further

**ORDERED** that Defendant Galloway acknowledges that the Horkulics were not made whole by the settlement for their damages and that Attorney Galloway's policy of insurance was fully exhausted as a result of payment of the Five Hundred

Thousands (\$500,000.00) cash payment set forth hereinbefore.

It is further

**ORDERED** that if Attorney Galloway files any type of claim against TIG Insurance Company and/or Cambridge Professional Liability Services, the Horkulics will receive thirty-three and one-third percent (33-1/3%) of the gross amount of any monies or things collected. It is further

**ORDERED** that TIG does not consent and objects to the confessed judgments of liability and damages made by Attorney Galloway. It is further

**ORDERED** that the Horkulics will not execute on the judgments against Attorney Galloway above the Five Hundred Thousand Dollar (\$500,000.00) cash payment, and the Horkulics will not record the judgment in the County Clerk's Office. It is further

**ORDERED** that the Horkulics or Galloway may request this Court to make a good faith settlement finding as to the settlement. It is further

**ORDERED** that the Horkulics may direct TIG to purchase a structured annuity through a broker of their choice from the Five Hundred Thousand Dollar (\$500,000.00) proceeds. It is further

**ORDERED** that the Horkulics' counsel may submit a petition requesting that this Court consider awarding attorney fees and expenses incurred as a result of the motion to compel enforcement of compromise settlement agreement. It is further

**ORDERED** that TIG Insurance Company is prohibited from seeking a judgment against Defendant Galloway's personal assets as a result of any of his actions in this proceeding and in his representation of the Horkulics. It is further

**ORDERED** that the underlying malpractice case is dismissed with prejudice. It is further

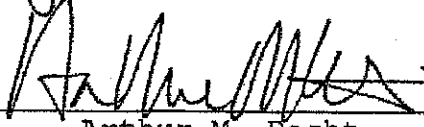
**ORDERED** that the stay previously entered in this action relating to Count VI of the Complaint against TIG Insurance Company and Cambridge Professional Liability Services be and is hereby lifted and the parties are free to engage in discovery.

It is further

*the objection of the Defendants Presented to the Order.*

**ORDERED** that the Clerk of this Court shall provide an attested copy of this Order to all counsel of record.

ENTERED this 25<sup>th</sup> day of August, 2006.

  
Arthur M. Recht  
Judge of the Circuit Court  
Hancock County, West Virginia

A TRUE COPY  
Attests Brenda Jackson  
Clerk, Circuit Court, Hancock County  
Deputy